



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 3602-99
13 December 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

With regard to your request for retirement under the Temporary Early Retirement Authority (TERA), the Board noted that you did not qualify for that program because it became effective on 23 October 1993, more than two years after you were discharged from the Navy because of your obesity.

Concerning your request for disability retirement, the Board noted that you underwent a pre-separation physical examination on 17 December 1990, and were found physically qualified for separation. The fact that you received 10% ratings from the Department of Veterans Affairs (VA) for arthritis of the thoracic spine, low back pain, and tinnitus was not considered probative of error or injustice in your case because the VA assigns such ratings without regard to the issue of fitness to perform military duty. As noted above, you were found physically qualified for separation. The available records do not demonstrate that your minor back complaints or the ringing in your ears would have prevented you from continuing to perform your duties as a yeoman had you not been discharged because of obesity. As you know, obesity is not considered to be a disability under laws administered by the Navy or the VA.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

VA.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director